

ENS Litigation Newsletter

October 2022 – February 2023

Welcome to the new Litigation Newsletter from the [European Network on Statelessness](#) (ENS). This resource is in addition to ENS' general newsletter and focuses on bringing you an overview of developments on statelessness from European courts, an update on our litigation activities across the network, recent publications relevant for legal practitioners, and notification about upcoming events and opportunities.

Jump to...

[European Litigation Updates](#) | [Stay Tuned](#) | [Resources](#)



Update on Statelessness Litigation in Europe

This section includes relevant European case law on statelessness and nationality from regional and domestic courts. For more details about these judgments and to browse over 250 other cases, visit our [Statelessness Case Law Database](#).

International Courts

Finland has a duty to protect its nationals held in camps in Syria

[Committee on the Rights of the Child, S.N. et al. v. Finland, communication no. 100/2019](#) (7 October 2022)

Children of Finnish nationality born in Syria, whose parents are allegedly associated with ISIS, were detained together with their mothers in the Hawl camp in Syria. The Committee found that their detention was unlawful and that Finland, as the country of the children's nationality, has the "capability and the power" to repatriate them or provide other consular responses.

Refusal to grant exemptions to naturalisation requirements based on health status must be justified

[Human Rights Committee, JSKN v. Denmark, communication no. 2754/2016](#) (25 October 2022)

Danish authorities refused to grant a stateless Palestinian diagnosed with post-traumatic stress disorder an exemption from the language proficiency requirements and nationality test based on his disability, and rejected his application for naturalisation. The Committee found that Denmark violated Article 26 of the ICCPR by failing to demonstrate that the refusal was based on reasonable and objective grounds.

Regional Courts

Parent-child relationship for children born to same-sex couples through surrogacy must be recognised

[European Court of Human Rights, D.B. and others v. Switzerland, application nos. 58817/15 and 58252/15 \(22 November 2022\)](#)

The Swiss authorities refused to recognise the parental relationship between a child born through a surrogacy arrangement in the US and the intended father (without a biological link), even though it had been recognised by a US court. For over seven years, it was impossible to recognise the parent-child relationship in Switzerland. The Court held that the Swiss authorities were not acting in the best interests of the child and that the impossibility of recognising the parent-child relationship was a disproportionate interference with the child's right to respect for private life under Article 8. Although the child held US citizenship and there was therefore no risk of statelessness, the judgment may help prevent statelessness among children born through surrogacy arrangements. The Court built on its jurisprudence in the case of [Mennesson v. France](#). See also the [full judgment](#) and [press release](#). Read more about the case in this [piece](#).

Access to nationality differentiating between persons born in France before and after Algerian independence to parents born in French Algeria is not discriminatory

[European Court of Human Rights, Zeggai v. France, application no. 12456/19 \(13 October 2022\)](#)

The applicant was born in France, before Algerian independence, to parents who (at the time of his birth) were French nationals born in French Algeria. When Algeria gained independence, the applicant's parents did not opt to have French nationality recognised and therefore both the parents and the applicant lost that opportunity. The applicant's siblings acquired French nationality, as they were also born in France but after Algerian independence. The Court found that the policy that offered the option to acquire French nationality had the legitimate aim of preserving the family unit by granting children the same status as their parents, therefore it was not discriminatory and there had been no violation of Article 14 taken together with Article 8 ECHR. See also the [full judgment](#) and [press release](#).

ECtHR declares application inadmissible in Dabetić v. Italy because the applicant was recognised as stateless

[European Court of Human Rights, Dabetić v Italy, application no. 31149/12 \(17 November 2022\)](#)

The European Court of Human Rights declared the application in Dabetić v Italy inadmissible. It found that the applicant was no longer a victim of a violation of the European Convention on Human Rights (ECHR) because, after the application was submitted, the Italian court recognised his statelessness status. However, the case nonetheless highlights systemic failings to respect the fundamental rights of stateless people which remain to be addressed by the European Court of Human Rights as a result of this inadmissibility decision. See also the [Court's decision](#). Read more about the [background of this case](#) and our [joint third party intervention](#) with the AIRE Centre.

Authorities must regularly assess whether detainees have a 'realistic prospect' of removal

[European Court of Human Rights, Gashkov and Satirov v Russia, applications nos. 31147/20 and 772/21 \(15 December 2022\)](#): the applicants were detained in Russia in

view of their expulsion respectively to Ukraine and Georgia. They claimed to be stateless but the Russian authorities did not properly assess whether the removal remained a 'realistic prospect' throughout detention, thus the Court found a breach of Article 5.

National Courts

France rejects temporary protection to holder of temporary residence permit in Ukraine

[France - Council of State, judgment no. 465365](#) (27 December 2022): French authorities rejected an application for temporary protection made by an Armenian national who held a temporary residence permit in Ukraine. The French Council of State recalled that France did not extend the scope of temporary protection to other categories of people according to the EU Temporary Protection Directive and Council Decision. It held that the difference in treatment between third-country nationals, depending on whether or not they hold a permanent residence permit in Ukraine, does not as such infringe the principles of equal treatment or non-discrimination as to give rise to serious doubts as to the lawfulness of the refusal decision. See also a summary on the [ELENA weekly legal update](#). While in this case the applicant was an Armenian national, it confirms serious concerns that ENS has raised regarding the [exclusion from temporary protection for most stateless people](#) fleeing Ukraine.

Doubts about acquisition of British citizenship of children of EU nationals

[United Kingdom – High Court, R \(on the application of Roehrig\) v SSHD \[2023\] EWHC 31 \(Admin\)](#) (20 January 2023): The question in this case was whether a person born in the UK on 20 Oct 2000 to an EU citizen mother was a British citizen at birth. On 2 Oct 2000, the UK Home Office changed its previous position, now requiring that an EU citizen must be granted 'indefinite leave to remain' to be considered 'settled' in the UK and for their children to be British citizens at birth on this basis. The mother in this case had not applied for indefinite leave to remain, but under the Government's previous approach to these issues, she would have been considered to have been 'settled' in the UK. The Court held that the Home Office had previously misinterpreted the term 'settled' and that the applicant was not a British national at birth because at the time his mother was not settled in the UK. This judgment potentially affects many thousands of children born in the UK to EU citizens since 1983 and could result in some being considered stateless. The judgment (arguably) misinterprets EU law and UK law and might be appealed. Read more about the case in the [Freemovement blog](#) and [also this blog](#).



Stay Tuned

This section highlights major cases pending before the courts at international, regional and international level. It also updates on recent activities that we have been up to.

Strategic litigation training

ENS held two training sessions of two days each July and October 2022 for ENS members on strategic litigation in partnership with the AIRE Centre with the funding from the Open Society Justice Initiative. The trainings were intended for members litigating on statelessness. They focused on assisting in identifying suitable cases for litigation, ensuring that cases have strategic merit, navigating the European and

international mechanisms and courts, measuring impact, and allowing better harnessing and employment of international law arguments in litigation work. There was also a discussion on challenges and good practices in conducting litigation on statelessness, and identifying gaps and opportunities.

New STARLIGHT project to empower legal practitioners

The Hungarian Helsinki Committee and the Hertie School launched a new project on building knowledge, skills and connections for legal practitioners to use the EU Charter of Fundamental Rights (STARLIGHT). See [here](#) for more information.

Pending cases

- The [European Roma Rights Centre \(ERRC\)](#) and the [Macedonian Young Lawyers Association \(MYLA\)](#) submitted in November a [collective complaint](#) on behalf of unregistered Roma against the Ministry of Justice of North Macedonia, alleging that unregistered Roma are denied access to their basic rights due to their lack of civil registration. The ERRC and MYLA also hope that litigation will help achieve changes in the recently adopted Law on Unregistered Persons in the Birth Registry, which has not been adequately implemented in practice. Read more on about this complaint on [ERRC's press release](#).
- The Sofia City Administrative Court made a preliminary ruling request to the Court of Justice of the EU in the case of a stateless mother and her 5-year-old daughter from the Gaza Strip. The family was registered with UNRWA in the past and their application for international protection in Bulgaria was rejected. [Foundation for Access to Rights \(FAR\)](#) is providing legal assistance in this case.



Resources

This section highlights recent publications, reports and blogs that we or other organisations have published.

Publications

- [Litigation Toolkit on Statelessness for Legal Practitioners](#) (ENS & AIRE Centre): this toolkit aims to provide a framework and guidance for legal practitioners on conducting litigation on statelessness. The first volume provides guidance to improve understanding of strategic litigation, identifying and litigating impactful cases, or submitting third party interventions. The second volume draws on the [Statelessness Case Law Database](#) to outline key jurisprudence from regional and international courts.
- [Lebanon: Stateless Palestinians](#) (Asylos): the report provides a picture of the situation for stateless and undocumented Palestinians in Lebanon, highlighting the various forms and layers of discrimination perpetrated by state actors as well as within communities and families.
- [Principles for Conducting Country of Origin Information Research on Statelessness](#) (Asylos): publication with six research principles to encourage COI researchers, legal representatives and decision-makers to take a more holistic and informed approach to international protection claims involving stateless

persons, leading to an improvement in the availability of good quality COI research and well-founded decisions.

- [Report on Palestinians and the Search for Protection as Refugees and Stateless Persons](#) (BADIL & ENS): this report considers the legal status of Palestinian refugees and stateless persons, providing a summary and critical analysis of jurisprudence relating to Article 1D of the Refugee Convention, and statelessness determination relating to Palestinians under the 1954 Convention. See also the related [briefing](#) and Cynthia Orchard's blog "[It's a terrible thing to lose hope](#)".
- [Implementing judgments in the field of asylum and migration on odd days](#) (Hungarian Helsinki Committee): this research paper sheds light on the practice of non-implementation of asylum judgements and its implications on the rule of law. This includes the examination of a statelessness-related judgment, and looks into relevant examples of where non-implementation reveals serious and systemic problems.
- [Statelessness & Citizenship Review, Vol 4 No. 1 \(2022\)](#): includes case notes on a [landmark judgment from Spain](#) children's right to a nationality, from the [UK on citizenship fees](#), and on [MKAH v. Switzerland](#).
- ['Addressing Statelessness through the Rule of Law'](#) (International Development Law Organisation and UNHCR).

ENS blogs & editorials

- [What a judge cannot see: statelessness determination in the Netherlands](#) (Katja Swider): after years of waiting, the Netherlands is close to introducing a judicial procedure to determine statelessness, but without effective access to a judge for undocumented stateless persons. If passed in its current form, the statelessness determination procedure (SDP) will reinforce the legal invisibility of statelessness persons.
- [Celebrating progress in the protection of rainbow families, but more needs to be done](#) (Arpi Avetisyan, ILGA Europe & Patrícia Cabral, ENS): the latest updates from the case of two children who are at risk of statelessness, simply because their birth certificates contain two parents of the same gender.
- [Addressing statelessness through the courts](#) (Alexia Tizzano & Patrícia Cabral, ENS): this editorial explores the role of strategic litigation in the fight to end statelessness and introduces our litigation toolkit for legal professionals.



STATELESSNESS
Case Law Database

For more updates and to browse over 200 other cases visit our [Statelessness Case Law Database](#).



European Network on Statelessness

28 Stainforth Road | London, E17 9RD | United Kingdom
info@statelessness.eu

[Update your preferences](#) or [unsubscribe from this list](#).

We are committed to ensuring that your privacy is protected. Our [Privacy policy](#) explains how and why we collect data, your rights and what procedures we have in place to fulfill these rights.

The European Network on Statelessness is a registered Charitable Incorporated Organisation in England. Charity Number 1158414.